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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,237	07/31/2003	Robert J. Lewis	780139.91611	1738
26710	7590	03/24/2005	EXAMINER	
QUARLES & BRADY LLP 411 E. WISCONSIN AVENUE SUITE 2040 MILWAUKEE, WI 53202-4497			ROSENBERG, LAURA B	
			ART UNIT	PAPER NUMBER
			3616	

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/631,237	LEWIS ET AL.	
	Examiner	Art Unit	
	Laura B Rosenberg	3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/9/03</u> .   | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: "4" (figure 5). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

2. Claim 23 is objected to because it is a duplicate of claim 18. Claim 23 should be amended or canceled.
3. Claims 4, 15-18, and 20-23 are objected to because of the following informalities:
- "control" should be --control handle-- (claim 4, line 2);
- "first and second control handles" should be --first and second controls-- (claim 15, line 14);

"the control signal" should be --a control signal-- (claim 15, line 15);

"handle" should be deleted from the phrase "control handle" (claims 16-18, 20-23).

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-6, 9, 10, 12-15, and 17-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Haack et al. (6,564,906). Haack et al. disclose a material handling vehicle (including #1, 101, 201, 301), or lift truck, comprising:

- Operator compartment (including #11, 111, 211, 311)
- First operator control handle (#31, 131, 231, or control handle of #325') mounted at a first position (first end) and able to operate in a first operator orientation (facing fore, in direction of forks)
- Second operator control handle (#31, 131, 231, or 331; column 6, lines 54-60) mounted at a second position (second end) and able to operate in a second operator orientation (facing aft, in direction opposite forks)

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- Traction system (including contents under cover #7, wheels #3-5, and associated connections) controlled by operator control handles to drive the vehicle in a selected direction
- Operator can control the traction system while in either operator orientation (best seen in figures 2-5)
- First operator control handle is multi-functional (column 5, lines 27-29)
- Second operator control handle is substantially horizontal (best seen in figures 2-5)
- Second operator control handle is "twist grip control"
- Deadman switch (#47, 49, 147, 149, 247, 249, 347, 349) mounted to the floor
- First control handle for operator facing first direction (toward forks) and rotational in the first direction to select motion in the first direction (current handle is rotational, and joystick configuration would also be rotational)
- Second control handle for operator facing second direction (away from forks) and rotational in the second direction to select motion in the second direction (current handle is rotational, and joystick configuration would also be rotational)
- Control handles are able to rotate to provide a control signal indicative of motion in a direction opposite the direction the operator is facing (able to move in reverse)
- Forks (#13, 113, 213, 313)
- Enclosure (including #15, 115, 215, 315)
- Steering mechanism (including #29, 129, 329, steering mechanism of #223) controlled by the operator to select a direction of motion and mounted for access during fore and aft stance operations

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6. Claims 1, 3, 4, 6, 9, 15, 17, 18, 19, and 21-23 are rejected under 35

U.S.C. 102(e) as being anticipated by Pollish, Jr. (6,679,349). Pollish, Jr. discloses a material handling vehicle (#10), or lift truck, comprising:

- Operator compartment (best seen in figure 1)
- First operator control handle (including #19, 20) mounted at a first position (first end) and able to operate in a first operator orientation (facing fore, to the right in figure 1)
- Second operator control handle (including #17, 18) mounted at a second position (second end) and able to operate in a second operator orientation (facing aft, to the left in figure 1)
- Traction system (conventional drive assembly) controlled by the operator control handles to drive the vehicle in a selected direction
- Operator can control the traction system while in either operator orientation
- Second operator control handle is a "twist grip control"
- Second operator control handle is substantially horizontal (best seen in figure 2)
- Fork (not labeled, but best seen in figure 1)
- Enclosure (including #11)
- Steering mechanism (including #13, 14, and steering wheels) controlled by the operator to select a direction of motion and mounted for access during fore and aft stance operations

7. Claims 1, 2, 4, 6, 7, 9-11, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Hale (1,672,212). Hale discloses a vehicle comprising:

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- Operator compartment (best seen in figure 3)
- First operator control handle (including #11) mounted at a first position (first end) and able to operate in a first operator orientation (facing fore, to the right in figure 1)
- Second operator control handle (including #11) mounted at a second position (second end) and able to operate in a second operator orientation (facing aft, to the left in figure 1)
- Traction system (including #6, 7, 7', 8, 8', 9, 9') controlled by the operator control handles to drive the vehicle in a selected direction
- Operator can control the traction system while in either operator orientation
- First operator control handle is a "multi-function control handle" (multiple gears)
- Second operator control handle is a "twist grip control"
- Mechanical linkage (including #7, 7', 8, 8') linking the control handles (best seen in figures 1, 3)
- First control handle for operator facing first direction (for example, to the right) and rotational in the first direction (rotational about base of #11) to select motion in the first direction
- Second control handle for operator facing second direction (for example, to the left) and rotational in the second direction (rotational about base of #11) to select motion in the second direction
- Control handles (#11) rotational around a substantially horizontal axis (axis through base of #11)

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The phrase "material handling vehicle" leads to the intended use of the vehicle and does not serve to distinguish the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 5 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pollish, Jr. (6,679,349) in view of Burgess (4,212,250). Pollish, Jr. does not disclose a "deadman" floor switch. Burgess teaches a material handling vehicle comprising first and second operator control handles (including #11, 12, 24) at first and second ends of the vehicle, a traction system (including #3, 4), and a deadman switch (#25, 26) mounted to the floor (best seen in figure 1). It would have been obvious to one skilled in the art at the time that the invention was made to modify the vehicle of Pollish, Jr. such that it comprised a deadman floor switch as claimed in view of the teachings of Burgess so as to prevent movement of the vehicle when an operator is not in proper position in the vehicle (Burgess: column 4).

10. Claims 8 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haack et al. (6,564,906) in view of Larsen et al. (4,919,233). Haack et al. disclose the



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first operator control handle being multi-functional (column 5, lines 27-29) and including a portion that is substantially horizontal (best seen in figures 2-5). Haack et al. do not disclose a horizontal portion being rotated to select a direction and speed of travel of the vehicle. Larsen et al. teach a material handling vehicle comprising an operator control handle (including #68) that has a portion that is substantially horizontal (best seen in figure 2) and is rotated to select the direction and speed of travel of the vehicle (column 3, lines 58-60). It would have been obvious to one skilled in the art at the time that the invention was made to modify the control handle of Haack et al. such that it comprised a horizontal portion that is rotated to select the direction and speed of travel as claimed in view of the teachings of Larsen et al. so as to provide for quicker and more accurate control over the speed of travel of the vehicle.

### ***Double Patenting***

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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12. Claims 1 and 2 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of copending Application No. 10/631,239. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1 and 2 of Application No. 10/631,239 read on claims 1 and 2 of the current application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schleicher, Woolf, Sherwen, Breault, Mycroft, van der Lely, Frees, Baier et al., Calaway, Scratchard, Ueda et al., Ishimaru, Kanefuji, Matsubara et al., and Yamamoto et al. each disclose a vehicle with dual control handles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura B Rosenberg whose telephone number is (703) 305-3135. The examiner can normally be reached on Monday-Friday 7:00am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on (703) 308-2089. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Beginning April 7, 2005, Laura B Rosenberg can be reached at the new USPTO location at (571) 272-6674, and Paul Dickson can be reached at (571) 272-6669.

*Laura B. Rosenberg*  
Laura B Rosenberg  
Patent Examiner  
Art Unit 3616

LBR

RUTH ILAN  
PRIMARY EXAMINER

*Ruth Ilan*  
3/21/05